

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1233

76-CR-245

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
PS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

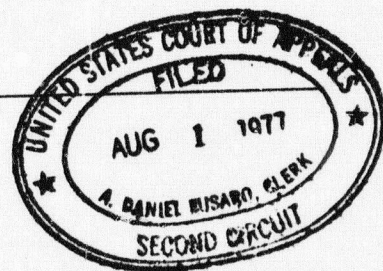
-against-

EDWARD MOORE, WILLIAM LAING,

Defendant-Appellants.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX
EDWARD MOORE



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Appellant, EDWARD MOORE
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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>PAGE</u>
Docket Entries	1a
Indictment	4a
Excerpts From Testimony	17a

CR 245-1

0718
207 1

MOORE, EDWARD
aka "Reverend Moore"

4 6
76 245

U.S. DIST. SECTION
18-371,495,657,
1708 & 2

OFFENSES CHARGED
Did conspire with others to
utter and publish as true forged
U.S. Treasury Checks, payable to
others, etc.

ORIGINAL COUNTS
20

U.S. MAG. CASE NO.
76 245

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began	4-6-76	4/5/76	1/13/77	4/29-77
Summons Served				
First Appearance				

III. MAGISTRATE

DATE	INITIAL/NO	INITIAL APPEARANCE DATE	INITIAL/NO	OUTCOME
4-6-76		4-6-76		DISMISSED
				HELD FOR GO OR OTHER PROCEEDING IN THIS DISTRICT
				HELD FOR GO OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.
Richard Brewster

ATTORNEYS
Delaney, C. R. / W. J. / S. J. / None / Other: JPD / JCD

LAING 2; COLLINS 3; JOHN DOE A/k/a "Melvin" 4

4-6-76 Before BRAMWELL, J - Indictment filed.

4-28-76 Before COSTANTINO J - case called - deft & present - counsel not present - court enters plea of not guilty on behalf of the deft - deft contd O.R. - adjd to June 7, 1976 for motions; adjd to June 21, 1976 for trial.

6-11-76 Before COSTANTINO J - case called - deft present with atty - all motions by June 19, 1976 and case set for trial on 7-26-76.

7/26/76 Before COSTANTINO, J. - Case called. Deft present without Counsel. Case adjd to 10/5/76 for trial.

7/28/76 Before COSTANTINO, J.- Deft Moore Present without Atty. Adjd to 7/30/76 for report.

7/30/76 Before COSTANTINO, J. - Case called. Deft present without counsel. Court to appoint Atty. Case adjd to 10/5/76 for trial.

8-27-76 Notice of readiness for trial filed

10-5-76 Before COSTANTINO, J.-Case called-Deft and counsel present-Case adjd to 11-15-76 for all purposes.

over

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

11-15-76 Before Costantino, J.-- Case Called. Deft. & Counsel present. Adj. to 12-17-76 for Report and for Trial on 12-20-76.

1/29/76 Bench warrant returned and filed - executed.

12-17-76 Before COSTANTINO, J. - Case called. Deft & counsel present. Case adj'd to 1-3-77.

1-3-77 Before Costantino, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 1-4-77.

1-4-77 Before Costantino, J.- Case Called. Deft. & Counsel present. Trial adj. to 1-5-77.

1-5-77 Before Costantino, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 1-6-77.

1-6-77 Before Costantino, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. opens. Trial continued to 1-10-77.

1-10-77 Before Costantino J J - case called - trial resumed - trial contd to 1-11-77.

1-11-77 Before Costantino J - case called - trial resumed - trial contd to 1-12-77

1-12-77 Before Costantino, J.= Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 1-13-77.

1-13-77 Before Costantino J - case called - deft & atty present - trial resumed - trial contd to 1-17-77

1-17-77 Voucher for expert services filed forwarded to Administrative Office, Washington, DC for payment.

1-17-77 Before Costantino, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft. moves to dismiss. Motion denied. Trial continued to 1-18-77.

-18-77 Before COSTANTINO J - case called - deft & atty present - motion to dismiss counts 5-11-15; motion granted; trial contd to 1-19-77

1-19-77 Before COSTANTINO J - case called - deft & atty present - trial resumed - trial contd to 1-20-77

1.20.77 Before Costantino, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 1.21.77.

1.24.77 Before Costantino, J.- Case Called. Deft. present with Counse 1. Trial resumed. Trial continued to 1.25.77.

1-25-77 Before Costantino J - case called - deft & atty present - trial resumed - trial contd to 1-26-77.

1-25-77 By Costantino J - 2 orders of sustenance filed

1-26-77 By Costantino J - Order of sustenance filed.

1-27-77 Before COSTANTINO J - case called - defts & attys present - trial resumed - Jury returns at 4:10 PM and finds deft guilty as to counts 1 to 11 - sentence adjd without date. Trial concluded - Jury polled and discharged.

1-28-77 Stenographers transcript filed dated 1-27-77

MORRE, EDWARD

3a

76

Yr.

24

Docket

V. EXCLUDABL

(a)

(b)

DATE	PROCEEDINGS (continued)
	(Document No.)
1.28.77	Voucher for Compensation for Expert Services filed and forwarded to Washington for payment.
1.28.77	Voucher for compensation for Expert Services filed and forwarded to Washington for payment.
1.26.77	Before Costantino, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 1.27.77
1.31.77	By Costantino, J.- Order of Transportation filed.
1.31.77	By Costantino, J.- Order of Sustenance filed.
2.1.77	Stenographer's Transcripts dated January 3, 5, 13, 17, 11, 12, 24, 26, 25, 20, 10, 19 and 6, 1977 also 18 filed.
4-1-77	Before Costantino J - case called - deft not present - counsel John Patton present - Bench warrant ordered - execution stayed to 4-6-77 @ 4 PM. adjd to 4-14-77 for sentence.
4-14-77	Before Costantino J - case called - sentence adjd to 4-21-77
4/21/77	Before Costantino, J--case called sentence adjd to 4/28/77.JLJ
4.29.77	Before Costantino, J.- Case Called. Deft. & Counsel present. Deft. sentenced for a period of four years to run concurrently with all 11 counts pursuant to T-18, U.S.C., Section 4205 (b)(2). Execution of sentence stayed pending appeal. Deft. placed on \$50,000.00 O.R. Bond.
4.29.77	Judgment and Commitment filed. Certified Copies to Marshal and Probation.
5.9.77	Notice of Appeal filed.
5.9.77	Duplicate Copy of Notice of Appeal and Certified Copy of Docket entries mailed to the Court of Appeals.
5-20-77	Scheduling Order filed received from the court of appeals that the record on appeal be filed on or before June 2, 1977.
5-23-77	Record on appeal certified and mailed to the court of appeals. rs
5/31/77	Acknowledgement from C of A rec'd for index on appeal & filed.jlj
6/29/77	Voucher for expert services filed.jlj

TRP:RWB:sd
F. #743195

U.S. DISTRICT COURT NY

4a

APR 6 1976

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

WARD MOORE, also known as
"Reverend Moore",
WILLIAM LAING,
ROBERT LEE COLLINS, also known as
"Sha Sha", and
JOHN DOE, also known as
"Melvin",

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between January 31, 1974 and April 25, 1974, both dates being approximate and inclusive, within the Eastern District of New York, EDWARD MOORE, also known as "Reverend Moore", WILLIAM LAING, ROBERT LEE COLLINS, also known as "Sha Sha", JOHN DOE, also known as "Melvin" (referred to herein as the defendants) together with Jacqueline Murphy and others known and unknown to the Grand Jury (referred to herein as co-conspirators but not as defendants) did knowingly and unlawfully combine, conspire, confederate and agree to commit offenses against the United States in violation of Title 18, United States Code, Sections 495 and 1708, by conspiring (a) to utter and publish as true United States Treasury checks upon which the names of the payees had been forged, knowing the payees' names to have been forged, and (b) to possess tax refund, social security, welfare and other checks, which were the contents of letters stolen from the United States mail, knowing the same to have been stolen.

76 CR 245

1. It was part of said conspiracy that the defendant EDWARD MOORE would obtain forged checks (including United States Treasury checks) directly or indirectly from the defendant ROBERT LEE COLLINS, the defendant JOHN DOE, also known as "Melvin", Jacqueline Murphy (named herein as a co-conspirator but not as a defendant) and others known and unknown to the Grand Jury.

2. It was further a part of said conspiracy that the defendant EDWARD MOORE would deposit the aforesaid forged checks (including United States Treasury checks) into one or more accounts at the Brownsville Community Federal Credit Union at 1619 Pitkin Avenue, Brooklyn, New York, including said defendant EDWARD MOORE's personal account (Account Number 1822) at said Credit Union and the account at said Credit Union of the Universal Science Church of God (Account Number 3050) of which church said defendant EDWARD MOORE was pastor and the defendant WILLIAM LAING was an incorporator, and over which account both of said defendants held signature power.

3. It was further a part of said conspiracy that the defendant WILLIAM LAING, acting as Manager and chief executive officer of said Brownsville Community Federal Credit Union, knowingly and intentionally aided and abetted the aforesaid scheme by causing large numbers of checks to be accepted for deposit from the defendant EDWARD MOORE without any endorsement by the defendant EDWARD MOORE and by approving repeated and systematic withdrawals of substantial sums of money from said Credit Union by said defendant EDWARD MOORE.

4. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York:

O V E R T A C T S

1. On or about the 19th day of April 1974, the defendant ROBERT LEE COLLINS did knowingly and intentionally forge the name of the payee on United States Treasury check No. 79,913,239 dated April 19, 1974 in the sum of Five Hundred Forty Dollars (\$540.00), payable to Sarah L. Lane.

2. On or about the 19th day of April 1974, the defendant ROBERT LEE COLLINS did deliver the check mentioned in the previous paragraph to the defendant EDWARD MOORE, also known as "Reverend Moore", in exchange for a payment of approximately one half the face amount of said check.

3. On or about April 19, 1974, the defendant EDWARD MOORE deposited the aforesaid check to the account of the Universal Science Church of God (Account Number 3050) at the Brownsville Community Federal Credit Union.

4. Each of the acts referred to in Counts 2, 4 through 8 and 10 through 13 of this indictment is hereby incorporated by reference as an overt act in furtherance of the aforesaid conspiracy. (Title 18, United States Code, §371).

COUNT TWO

On or about the 1st day of March 1974, within the Eastern District of New York, the defendants EDWARD MOORE, also known as "Reverend Moore", and WILLIAM LAING with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 64,611,625, drawn under symbol 2204, dated March 1, 1974 in the sum of Sixty Five Dollars and Forty Cents (\$65.40) payable to Margaret R. Steiger, upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2).

COUNT THREE

On or about the 19th day of April 1974, within the Eastern District of New York, the defendants EDWARD MOORE, also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE COLLINS, also known as "Sha Sha", with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 79,913,239, drawn under symbol 3047, dated April 19, 1974 in the sum of Five Hundred Forty Dollars (\$540.00) payable to Sarah L. Lane, upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2).

COUNT FOUR

On or about the 15th day of March 1974, within the Eastern District of New York, the defendants EDWARD MOORE, also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE COLLINS, also known as "Sha Sha", with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 28,734,621, drawn under symbol 3047, dated March 15, 1974 in the sum of Five Hundred Thirty Five Dollars (\$535.00) payable to Lucilda Boothe, upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2).

COUNT FIVE On or about the 19th day of April 1974, within the Eastern District of New York, the defendants EDWARD MOORE, also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE COLLINS, also known as "Sha Sha", with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 79,950,867, drawn under symbol 3047, dated April 19, 1974 in the sum of Three Hundred Forty Five Dollars (\$345.00) payable to Booker and Barbara King, upon which the names of the payees had been forged, knowing the payees' names to be forged. (Title 18, United States Code, §495 and §2).

SIX

COUNT

On or about the 2nd day of March 1974, within the Eastern District of New York, the defendants EDWARD MOORE, also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE COLLINS, also known as "Sha Sha", with intent to defraud the United States, did utter and publish as true United States Treasury Check No. 48,119,120, drawn under symbol 3495, dated March 2, 1974 in the sum of One Hundred Forty Eight Dollars and Ninety Cents (\$148.90) payable to Willie Mickle, upon which the name of the payee had been forged, knowing the payee's name to be forged. (Title 18, United States Code, §495 and §2).

SEVEN

COUNT

On or about the 1st day of March 1974, within the Eastern District of New York, the defendants EDWARD MOORE, also known as "Reverend Moore", and WILLIAM LAING did unlawfully have in their possession United States Treasury Check No. 64,611,625, drawn under symbol 2204, dated March 1, 1974 in the sum of Sixty Five Dollars and Forty Cents (\$65.40) payable to Margaret R. Steiger, which was the contents of a letter stolen from the United States mail, the defendants knowing the same to have been stolen. (Title 18, United States Code, §1708 and §2).

COUNT EIGHT On or about the 19th day of April 1974, within the 9a
Eastern District of New York, the defendants EDWARD MOORE,
"also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE
COLLINS, also known as "Sha Sha", did unlawfully have in their
possession United States Treasury Check No. 79,913,239, drawn
under symbol 3047, dated April 19, 1974 in the sum of Five
Hundred Forty Dollars (\$540.00) payable to Sarah L. Lane, which
was the contents of a letter stolen from the United States
mail, the defendants knowing the same to have been stolen.
(Title 18, United States Code, §1708 and §2).

COUNT ~~EIGHT~~ NINE

On or about the 15th day of March 1974, within the
Eastern District of New York, the defendants EDWARD MOORE,
also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE
COLLINS, also known as "Sha Sha" did unlawfully have in their
possession United States Treasury Check No. 28,734,621, drawn
under symbol 3047, dated March 15, 1974 in the sum of Five
Hundred Thirty Five Dollars (\$535.00) payable to Lucilda Boothe,
which was the contents of a letter stolen from the United
States mail, the defendants knowing the same to have been
stolen. (Title 18, United States Code, §1708 and §2).

COUNT ~~NINE~~ TEN

On or about the 19th day of April 1974, within the
Eastern District of New York, the defendants EDWARD MOORE,
also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE
COLLINS, also known as "Sha Sha", did unlawfully have in their
possession United States Treasury Check No. 79,950,867, drawn
under symbol 3047, dated April 19, 1974 in the sum of Three
Hundred Forty Five Dollars (\$345.00) payable to Booker and
Barbara King, which was the contents of a letter stolen from
the United States mail, the defendants knowing the same to
have been stolen. (Title 18, United States Code, §1708 and §2).

COUNT ~~TEN~~ ELEVEN

10a

On or about the 2nd day of March 1974, within the
Eastern District of New York, the defendants EDWARD MOORE,
also known as "Reverend Moore", WILLIAM LAING and ROBERT LEE
COLLINS, also known as "Sha Sha", did unlawfully have in their
possession United States Treasury Check No. 48,119,120, drawn
under symbol 3495, dated March 2, 1974 in the sum of One
Hundred Forty Eight Dollars and Ninety Cents (\$148.90) payable
to Willie Mickle, which was the contents of a letter stolen
from the United States mail, the defendants knowing the same
to have been stolen. (Title 18, United States Code, §1708
and §2).

COUNT ~~ELEVEN~~ TWELVE

On or about the 26th day of March 1974, within the
Eastern District of New York, the defendant WILLIAM LAING,
being an officer of an institution, namely the Brownsville
Community Federal Credit Union, the accounts of which were
then and there insured by the Administrator of the National
Credit Union Administration, did abstract, purloin and
wilfully misapply monies in the amount of Five Thousand
Dollars (\$5,000.00) entrusted to the care of said Credit
Union by withdrawing and converting to his own use the sum
of Five Thousand Dollars (\$5,000.00) from the personal account
of Edward Moore (Account Number 1822) at said Credit Union.
(Title 18, United States Code, §657).

COUNT ~~TWELVE~~ THIRTEEN

On or about the 3rd day of May 1974, within the
Eastern District of New York, the defendant WILLIAM LAING,
being an officer of an institution, namely the Brownsville
Community Federal Credit Union, the accounts of which were
then and there insured by the Administrator of the National
Credit Union Administration, did abstract, purloin and
wilfully misapply monies in the amount of Three Thousand
Dollars (\$3,000.00) entrusted to the care of said Credit
Union by causing the sum of Three Thousand Dollars (\$3,000.00)

to be withdrawn from account 3050 at said Credit Union, 11a
being an account maintained by Edward Moore and over which
the defendant WILLIAM LAING had signature power, the defendant
WILLIAM LAING having been informed prior to the time of said
withdrawal that at least nineteen checks previously deposited
by said Edward Moore at said Credit Union had forged en-
dorsements of the respective payees thereon. (Title 18,

United States Code, §657).

COUNT FOURTEEN On or about the 10th day of May 1974, within the
Eastern District of New York, the defendant WILLIAM LAING,
being an officer of an institution, namely the Brownsville
Community Federal Credit Union, the accounts of which were
then and there insured by the Administrator of the National
Credit Union Administration, did abstract, purloin and
wilfully misapply monies in the amount of Two Thousand
Dollars (\$2,000.00) entrusted to the care of said Credit
Union by causing the sum of Two Thousand Dollars (\$2,000.00)
to be withdrawn from account 3050 at said Credit Union,
being an account maintained by one Edward Moore and over
which the defendant WILLIAM LAING had signature power, the
defendant WILLIAM LAING having been informed prior to the
time of said withdrawal that at least nineteen checks previously
deposited by said Edward Moore at said Credit Union had forged
endorsements of the payees thereon. (Title 18, United

States Code, §657).

COUNT FIFTEEN On or about the 2nd day of March 1976, within the
Eastern District of New York, the defendant WILLIAM LAING,
having taken an oath that he would testify truly before a
duly empanelled Grand Jury of the United States of America,
did knowingly and wilfully and contrary to said oath, state
material matters which he knew to be false, that is to say:

1. At the time and place aforesaid, the Grand 12a
Jury was conducting an investigation to determine whether
there had been committed in the Eastern District of New
York violations of the laws of the United States, to wit:
Title 18, United States Code, Section 495 (forged instruments),
18 U.S.C., §371 (conspiracy) and 18 U.S.C. §1708 (possession
of stolen mail) and other laws of the United States.

2. It was material to the aforesaid investigation
to determine whether the defendant WILLIAM LAING participated
in a conspiracy with one Edward Moore, also known as "Reverend
Moore", to deposit forged checks in one or more accounts at
the Brownsville Community Federal Credit Union, among other
things by permitting said Edward Moore, unlike other members
of said Credit Union, to deposit large numbers of third party
checks in said Credit Union without endorsement by said
Edward Moore.

3. On the 2nd day of March 1976, within the Eastern
District of New York, the defendant WILLIAM LAING appeared as
a witness before the aforesaid Grand Jury and then and there
being under oath, testified falsely before the Grand Jury with
respect to the aforesaid matters as follows:

Q. Is it fair to say, during the time

you were there you permitted every
member of the credit union who was
depositing a third-party check to
make that deposit without an en-
dorsement, so long as his account

number was on the check?

A. So long as he permitted his account

number to be written on the check...

4. The aforesaid testimony of the defendant

WILLIAM LAING, as he then and there knew and believed, was
not true in that the general practice of the said Credit
Union was to require the depositing member's endorsement
upon the deposit of third party checks. (Title 18, United
States Code, Section 1023).

COUNT SIXTEEN On or about the 2nd day of March, 1976, within the Eastern District of New York, the defendant WILLIAM LAING 13a having taken an oath that he would testify truly before a duly empanelled Grand Jury of the United States of America, did knowingly and wilfully and contrary to said oath, state material matters which he knew to be false, that is to say:

1. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York violations of the laws of the United States, to wit: Title 18, United States Code, Section 495 (forged instruments) 18 U.S.C., §371 (conspiracy) and 18 U.S.C., §1708 (possession of stolen mail and other laws of the United States).

2. It was material to the aforesaid investigation to determine whether the defendant WILLIAM LAING, as manager of the Brownsville Community Federal Credit Union, prevented withdrawals from the accounts of one Edward Moore, also known as "Reverend Moore", from the moment that the defendant WILLIAM LAING learned that said Edward Moore had deposited bad checks in one or more accounts at said Credit Union.

3. On the 2nd day of March 1976, within the Eastern District of New York, the defendant WILLIAM LAING appeared as a witness before the aforesaid Grand Jury and then and there being under oath, testified falsely before the Grand Jury with respect to the aforesaid matters as follows:

Q. Mr. Laing, when did you freeze Mr.

Moore's accounts?

A. I don't know.

Q. Did you not do anything when the postal inspector came in and told you the checks were going to bounce?

A. No.

Q. You didn't do anything until the checks actually came back?

A. I'm not quite sure. I know immediately after this I did not permit any trans- 14a actions to go into any of his accounts, from the moment I was aware that there were bad checks about to return.

Q. From the day that the postal inspector came in?

A. Yes. Prior to that he had been into the union and had a loan with the credit union and he came in and transferred out that money. You know, to

pay I reversed those transactions.

Q. You did not permit him to deposit

or withdraw money from the day that

the postal inspector came in?

A. From the moment I was aware that

this was something that had to do

with something wrong.

4. The aforesaid testimony of the defendant WILLIAM

LAING, as he then and there knew and believed, was not true in that the defendant WILLIAM LAING had charged the personal account (Account Number 1822) of said Edward Moore for substantial sums of bad checks as early as March 14, 1974, had discussed the problem of forged checks in said account with Postal Inspector David Anthony on April 25, 1974 and yet personally authorized repeated withdrawals of sums in excess of \$1,000 from accounts of said Edward Moore at said Credit Union as late as May 10, 1974. (Title 18, United States Code, Section 1623).

COUNT SEVENTEEN On or about the 2nd day of March 1976, within the

Eastern District of New York, the defendant WILLIAM LAING, having taken an oath that he would testify truly before a duly empanelled Grand Jury of the United States of America, did knowingly and wilfully and contrary to said oath, state material matters which he knew to be false, that is to say:

1. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York violations of the laws of the United States, to wit: Title 18, United States Code, Section 495 (forged instruments) 18 U.S.C., §371 (conspiracy) and 18 U.S.C., §1708 (possession of stolen mail) and other laws of the United States.

2. It was material to the aforesaid investigation to determine whether the defendant WILLIAM LAING ever personally received any monies from one Edward Moore, also known as "Reverend Moore", or any account of said Edward Moore.

3. On the 2nd day of March 1976, within the Eastern District of New York, the defendant WILLIAM LAING appeared as a witness before the aforesaid Grand Jury and then and there being under oath, testified falsely before the Grand Jury with respect to the aforesaid matters as follows:

Q. Mr. Laing, when you were at the credit union you forged Mr. Moore's name on the back of a \$5,000 check, did you not?

A. Yes. I wouldn't consider it as forged. I think I --

Q. Why did you sign his name on the back of a \$5,000 check?

A. I think I was out of the office and the clerk who prepared the check -- when I was checking off the things in the evening, discovered that Mr. Moore had made a deposit and he had made a withdrawal and he had -- the check was cashed.

Q. This was a check payable to Mr. Moore?

A. And it was cashed. See seemed to have allowed him to take the money without having him endorse the check. When I realized that this was what took place, then I okayed the check. I knew he had already taken the money.

Q. Did you receive any portion of the \$5,000 represented by that check?

A. No, Sir.

4. The aforesaid testimony of the defendant WILLIAM LAING, as he then and there knew and believed, was not true in that the defendant WILLIAM LAING had personally in fact authorized and signed a receipt for said \$5,000 check upon the check stub attached thereto at the time of issuance. (Title 18, United States Code, Section 1623).

A TRUE BILL.

Joseph M. O'Malley
FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Johnson-direct

172

Exhibit 2-2 back together again, sir, if you can, without moving anything around.

A Surely. (Witness complies.)

Q Detective Johnson, do you recall the date or the approximate date that you wired or caused Miss Murphy to be wired?

A I believe it was July 31, 1974.

Q And did you take Miss Murphy anywhere or conduct a surveillance when Miss Murphy went anywhere while wearing that recording device, Exhibit 2-2?

A Yes.

Q Can you tell us what happened.

A We drove with Miss Murphy and her daughter to 1460 St. John's place in Brooklyn, the Universal Science Church of God, at St. Johns Place just off Ralph Avenue.

Q All right. Now, when you arrived at the Universal Science Church of God on St. Johns Place, did there come a time when Miss Murphy got out of the car wearing that recording device?

A Yes.

Q What did you observe? What did she do after getting out of the car?

A Before she got out of the car we turned the machine on and we observed her go into the church thereafter.

Johnson-direct

173

Q Now, did there come a time that Miss Murphy exited from the church?

A Yes, sir.

Q As you sit here today, do you have any recollection as to approximately how long she was inside, roughly?

A About half an hour, maybe a little less.

Q Now, what happened when she came out?

A She had been instructed to go to her home, which was across the street.

Q Did you accompany her?

A No, she went into the building and I went in afterwards.

Q Then what happened?

A She took the machine off and I took the machine.

Q Now, sir, in addition to the Government exhibit that you have in front of you, both the Nagra device and the tape inside the Nagra device, before driving Miss Murphy over to Reverend Moore's church, did you have occasion to tape record a telephone conversation?

A Yes, sir.

Q What was that phone conversation?

A That was a telephone call by Miss Murphy to Reverend Moore informing him that--

MR. PATTON: Objection. Just there was a

Johnson-direct

174

1 conversation.

2 MR. BREWSTER: That's adequate, Judge.

3 Q Other than the tape recorded telephone conver-
4 sation and the tape recording obtained on the Nagra device,
5 at any time during this particular day was any other kind of
6 recording or transmitting device placed on Miss Murphy?
7

8 A Yes, sir.

9 Q Can you describe what kind of additional de-
10 vice was placed on Miss Murphy?

11 A That's a Kel recording device, which is about
12 the size of a pack of cigarettes.

13 Q Does that record inside this device or does it
14 transmit and record at some other location?

15 A It transmits and records at another location.

16 Q Have you had occasion to use both kinds of
17 devices during the course of your police duties?

18 A Yes, sir.

19 MR. BREWSTER: At this time the Government
20 offers in evidence Exhibits 2-2 and 2-3 for identi-
21 fication.

22 MR. PATTON: For identification only?

23 MR. BREWSTER: Offered into evidence.

24 MR. PATTON: Objection, subject to a voir dire
25 outside of the hearing of the jury. I think this would

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Johnson-direct

175

1 be a good time to take a recess.

2 THE COURT: It is reserved until after the
3 voir dire.
4

5 At this time we will recess.

6 You are not to come in tomorrow. Tomorrow
7 is a special day for other matters.

8 Come in Monday morning at ten o'clock. We
9 will go right through. There will not be anything
10 to interrupt us.

11 (The jury leaves the courtroom.)

12 THE COURT: You may step down.

13 (Witness leaves the courtroom.)

14 THE COURT: Gentlemen, Monday morning.

15 MR. PATTON: Judge, I would still like my voir
16 dire Monday morning.

17 MR. BREWSTER: Could we do the voir dire now?

18 MR. PATTON: It will be cross-examination
19 plus the voir dire. I think we should do it Monday
20 morning.

21 THE COURT: Come back Monday morning.
22
23
24
25

Johnson-direct

186

Q Can you tell us what exhibit 2-5 is?

A The original kel recording of that conversation.

MR. BREWSTER: I have no further questions.

MR. PATTON: These are marked for identification?

THE COURT: Yes.

MR. PATTON: Is there an outstanding offer?

THE COURT: I haven't heard it.

MR. BREWSTER: No, I don't plan to.

However, if anyone wants to move them into evidence, I have no objection.

THE COURT: All right.

MR. PATTON: I have an objection to the Nagra being offered in evidence, that outstanding objection, and may I have a voir-dire of the officer?

MR. BREWSTER: Can we have an offer of proof as to the nature of the voir-dire?

MR. PATTON: I don't believe I have to give an offer of proof.

THE COURT: He need not give an offer of proof to that. Solely to the tape you are talking about.

MR. PATTON: Yes. I ask it be done outside the hearing of the jury.

MR. BREWSTER: The normal practice --

MR. PATTON: I would like to do it outside the

Johnson-direct

187

presence of the jury.

THE COURT: Will you please step out. Try to be patient with me and we will get through it.

(The jury left the courtroom.)

VOIR-DIRE

EXAMINATION BY MR. PATTON:

Q Officer Johnson, you testified Friday with regard to Government's exhibit 2-3 marked for identification, this was the original tape on what day?

A July 30, 1974.

I think I said July 31.

Q Now, when was the last time -- the time prior to this passed Friday that you saw that tape?

A I believe it was about the 16th of December, 1976.

Q You say you saw it on the 16th of December, 1976?

A Yes.

Q Where did you see it?

A I picked it up from the store room where we keep them in the Department of Investigation Office.

Q What did you do with it on the 16th of December?

A I delivered it to Mr. Brewster.

Q Did you sign for it at the Department of Investigation?

A Yes.

Johnson-voir-dire

188

Q Where was it being kept in the Department of Investigation?

A We have a store room specifically for tapes.

Q Prior to December 16th, 1976, when you checked it out, when was the next time prior to that that you had seen the tape?

A (No response.)

Q Going back.

A I believe it might have been the date it was made or the next day.

Q It was made approximately 1975, is that correct?

A 74. How many times that tape came out?

Q You took the tape off Miss Murphy, is that correct?

A Yes.

Q What did you do?

A I delivered it to the Department of Investigation Office and I turned it in and a copy was made.

Q Did you play the original before you turned it in?

A No, sir.

Q You turned it in in 1974, July, or the first of August, around there?

Johnson-voir-dire

189

A Yes.

Q Do you have with you the inventory records say -- the log, the sign in and sign out log of the Department of Investigation?

A No.

Q As you sit there now, can you testify as to whether or not that ever came out up until December 16, 1976, out of that inventory room?

A I can testify that the original should not have come out.

Q I am not asking what you should not have done, do you know how many times between August 1st, 1974, and December 16, 1976, how many times that tape came out?

A The original? When an original tape

is made -- The original. A copy of that tape is made.

A I can't testify for sure.

Q As you sit there now, you don't know what happened between August 1, 1974 and December 16, 1976, is that correct?

A I know we turned it in and we have a procedure we go by whereby --

Q I am not asking about the procedure; do you know if that tape was under constant custody between August 1st, 1974 and December 16, 1976 as you sit there now?

Johnson-voir-dire

190

1 A Yes.

2 Q How do you know that?

3 A That is the procedure of our office.

4 Q I am not asking you the procedure, I am asking
5 you on that particular tape. I am not asking about your procedure.

6 A I can speak on this tape.

7 Q Yes?

8 A Yes, sir.

9 Q Tell me if that tape ever came out of the
10 inventory room at the Department of Investigation between
11 August 1st, 1974, and December 16, 1976?

12 A To my knowledge, it hasn't.

13 Q What do you base that on?

14 A On the fact, number one, when an original tape
15 is made, it is preserved and a copy of that tape is made and
16 if it is necessary to listen to that tape the copy of that
17 tape and the original will be preserved.

18 Q Was the original sealed at any time?

19 A No, it's preserved. We have a compartment that
20 I am not even allowed to go into that compartment.

21 Q There are several keys to that compartment?

22 A Yes.

23 Q There are five or six keys to that compartment?

24 A Yes.

Johnson-voir-dire

191

1 Q Five or six different people can go in and out
2 of that compartment?

3 A Yes.

4 Q Was that tape sealed?

5 A It wasn't sealed, no, sir.

6 Q Do you know as you sit there now, other than
7 this procedure, whether that tape was exactly the way it was
8 when you turned it in?

9 A From my looking at it I know it is the tape made
10 that day because it is marked.

11 Q That is the only way you know, because it is
12 marked?

13 A Yes.

14 Q You agree with me it is a simple matter of taking
15 a reel and putting the same marking on it and it can be a
16 different tape?

17 A But it isn't.

18 Q How do you know that?

19 A Because this is the original and I had to
20 sign out for this original tape from my office.

21 (continued next page)

Johnson-voir dire

192

BY MR. PATTON:

Q Sir you don't know as you sit on the witness stand whether that original was ever substituted by anyone?

You are going on what you believe to be a procedure?

A That's correct.

Q As you are sitting there now, you can't testify that no one substituted that tape, is that correct?

A That's right.

Q How many people touched that tape the day you handed it in?

A I couldn't say but I can tell you who is authorized to touch it.

Q Tell me?

A We have three wire personnel.

Q Am I not correct there are also six or seven keys other people can get into the compartment with and remove a tape without anyone knowing it?

A They have several keys.

Q You didn't answer the question. Do you understand the question?

A I understood the question.

Q Please answer it.

A People could do that, yes.

Q As you are sitting here now, you don't know

Johnson-voir dire

193

whether that was in fact done?

A That is correct.

Q As you are sitting here now, the only way you are telling me that that is the original is because it has a mark on it?

A Yes, that is correct.

Q Other than that fact, you wouldn't know?

A That's correct.

Q You don't agree it's an easy thing to put a marking on it?

A It is easy to mark it, yes sir.

Q Do you not agree with me that that reel is not such an unusual thing, sir, it could not have been substituted by another reel?

A That is correct.

Q You say you didn't listen to the original when you turned it in, correct?

A Yes.

Q When did you listen to the original for the first time?

A I don't think I have listened to the original.

Q Would there be another way to tell it is an exact tape, that would be to listen to it and listen and see if there is nothing different?

Johnson-voir dire

194

A That is the way.

C You didn't do that?

A No.

MR. PATTON: I press my objection. They have not established the authenticity of it.

THE COURT: It might go to the weight but it doesn't go to the authenticity.

MR. PATTON: May I be heard? It is not a question of weight, it is a question of authenticity. It is like a document. A document could not be admitted into evidence if it is --

THE COURT: There is no showing by you that the tape has been disturbed.

MR. PATTON: It's not incumbent upon me to.

THE COURT: The most you have done is raised an issue as to someone else removing it from the archives where it was placed --

MR. PATTON: They have not established a sufficient chain of possession of this tape to keep it from being tampered with.

THE COURT: The inference can be drawn. You are asking me to draw an inference that it was tampered with.

MR. PATTON: I press my objection.

195

Johnson-

THE COURT: Do you have anything to say, Mr. Brewster?

MR. BREWSTER: No, your Honor. At most, custody goes to weight.

MR. PATTON: I beg to differ. I submit it goes to the authenticity.

THE COURT: Who has copies of this?

THE WITNESS: We have a copy in the office.

THE COURT: You have a copy in the office?

MR. BREWSTER: We have a copy here. Mr. Patton has a copy. Judge, the tape will also be identified by Jacqueline Murphy. If asked, Detective Johnson can do voice identification, he has spoken to Mr. Moore.

THE COURT: I don't think he is talking about the identification, he is talking about whether or not anything has been excised or spliced or something removed.

MR. PATTON: That is correct.

THE COURT: I don't know. That is another phase of it if you want to go into that type of proof. Whether there has been a splice --

MR. PATTON: I submit they have not established sufficient chain of custody.

Johnson-

196

THE COURT: What does the custodial sheet indicate?

THE WITNESS: When the tape was logged and --

THE COURT: If you like the person logging it in, you may have him.

MR. PATTON: You are not in a position to testify to that?

THE WITNESS: No.

THE COURT: You are testifying from custom and usage itself. The custom is you turn it in and it stays there?

THE WITNESS: Yes.

THE COURT: I think the custodian himself is a necessary witness to determine whether or not there has been any accessibility to the tape.

MR. BREWSTER: If a question arises as we go along, we can bring in the custodian.

Jacqueline Murphy is the next witness and she will identify the tape as being an accurate tape. At that point, we propose to have the tape played.

THE COURT: I think that some point you should have the custodian come in and testify.

MR. BREWSTER: That is no problem.

THE COURT: I must agree with him. It goes to

197

Johnson-

the weight. The custodial testimony will go to the weight.

MR. BREWSTER: Can we do that after Jacqueline Murphy testifies?

THE COURT: As long as you don't play the tape.

MR. PATTON: That is correct.

THE COURT: You can't play the tape without having the prerequisite for it.

MR. BREWSTER: All right.

MR. PATTON: No further questions on the voir dire of Officer Johnson.

MR. BREWSTER: If Detective Johnson can give us the name of the person in the archives --

THE WITNESS: We will get him here, it's Detective Scally.

THE COURT: How soon can you get him?

THE WITNESS: Fifteen minutes if he is in the office.

MR. BREWSTER: We will have a call placed to Detective Scally.

MR. PATTON: Can we ask Scally to bring his log?

THE COURT: The custodial log, absolutely.

Johnson-

198

I agree with you.

THE WITNESS: Surely.

THE COURT: Any other questions of this witness?

MR. PATTON: As to the voir dire, no, but I do have cross-examination, Judge.

THE COURT: All right then, we can bring in the jury.

I suggest you take the tape away from him now.

Are you going to refer to the tape in your cross-examination?

MR. PATTON: No, sir.

(The jury is in the jury box.)

THE COURT: All right, cross-examination.

CROSS-EXAMINATION

BY MR. PATTON: Do you know that?

Q Officer Johnson, I understand you were the investigating officer for the Department of Investigation in this matter. Is that correct?

A Yes, the arresting officer.

Q You arrested Dr. Moore when?

A August 1, 1974.

Q Where?

A At the Department of Investigation office.

227

THE COURT: You don't have to worry about it.

(Juror number seven left chambers at this time.)

MR. PATTON: I see no reason to excuse him.

MR. KRINSKY: I don't.

THE COURT: The in camera hearing has resulted in retaining the juror with consent of the lawyers.

(The following took place in the courtroom.)

THE COURT: Bring in the jury.

MR. PATTON: Could you hold them up a moment, please?

THE COURT: Yes.

MR. PATTON: The first portion of the attempt by the Government to establish a chain of possession was done out of the hearing of the jury.

THE COURT: He has a right to come in and testify at this point.

MR. BREWSTER: I objected to having it outside the hearing of the jury.

MR. PATTON: The jury is getting a truncated version of it, they didn't hear Johnson on this.

THE COURT: The only reason he is here is to show custody.

MR. PATTON: I take exception for the record.

THE COURT: Bring in the jury.

(The jury in the jury box.)

Scalley - direct

228

THE COURT: Now we are ready to begin.

MR. BREWSTER: The Government calls Detective Thomas Scalley.

DETECTIVE THOMAS SCALLEY, a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. BREWSTER:

Q By whom are you employed?

A New York City Police Department.

Q What is your position with the New York City Police Department, Detective Scalley?

A I am currently assigned to the New York City Department of Investigation.

Q What is your rank?

A Detective.

Q Detective Scalley, would you please explain to us the general nature of your duties with the Department of Investigation?

A I oversee two other men in the Technical Service Bureau of the Department of Investigation with regard to the custody of tape recordings and the equipment used to make these recordings.

Scalley - direct

229

Q I ask you to examine a reel of tape which has been marked Government's exhibit 2-3 and I direct your attention specifically to the notation on the edge of the reel in black pen, can you recognize it?

A Yes.

Q Can you tell us what it is?

A It is a notation that is used by our department to signify that that reel is a concealable recording tape belonging to our department.

Q There is a notation on there, DICRR 1030?

A Yes.

Q Do you recognize the handwriting?

A I do.

Q Whose handwriting is it?

A It belongs to Mr. O'Brien.

Q Can you tell us who Mr. O'Brien is?

A Mr. O'Brien was a civilian investigator assigned to our department.

Q Under your supervision?

A Yes.

Q Sir, did you bring with you this morning or during the lunch hour a custody envelope at my request?

A Yes.

Q I show you an envelope marked Government's

Scalley - direct

230

exhibit 2-6 for identification and I ask you, sir, if that is the envelope which you brought with you at my request?

A It is.

Q Now, would you please explain to the jury how custody envelopes such as Government's exhibit 2-6 are used in connection with the storage of tape recordings?

A When a tape is brought into the department from one of the investigators, it is given to one of the men in technical service section. At this time, we enter or give the tape a number as well as making out a custody envelope with the same information. When this is done, the tape is duplicated, if necessary, and the original is placed in this envelope and placed into a vault.

Q Now, is Government's exhibit 2-6 for identification the actual custody envelope for the reel of tape which is marked Government's exhibit 2-3 for identification.

A Yes.

Q Can you tell us how you can determine that, sir?

A On the envelope it states original. There is DICRR 1030, that is the envelope for that tape on that machine on the table (Indicating).

MR. BREWSTER: I offer Government's exhibit 206 for identification into evidence.

MR. PATTON: May I see it, please?

Scalley - direct

231

(Pause.)

MR. PATTON: May I have a voir dire?

MR. BREWSTER: I think this is appropriate for cross-examination, Judge.

MR. PATTON: He is offering it into evidence, I think it is appropriate when one objects to an offer into evidence to have a voir dire.

THE COURT: He may have a voir dire.

MR. BREWSTER: I have no objection. Absolutely.

VOIR DIRE EXAMINATION

BY MR. PATTON:

Q Detective Scalley, I believe the Government exhibit 2-6 marked for identification is an envelope from your office, is that correct?

A Yes.

Q Does it reflect how many times this tape recording was removed from your office?

A It does.

Q Would you indicate to us what the procedures are for signing in and signing out a piece of evidence, to wit, tapes?

A An investigator would make a request to have a certain tape recording. One of the wire men would go into the vault, remove that tape recording, make a notation on the

Scalley - direct

232

envelope, make a notation also in a signout book, and he would then take the tape and give it to the investigator.

If that investigator is not to return that tape the same day he must give a receipt for it.

Q Now, am I not correct that the envelope indicates that on January 22, 1976, there was an entry that the tape was signed out by Detective Johnson, correct?

A Yes.

Q And it was returned by whom?

A Timothy O'Brien.

Q Is there anything on the envelope to indicate how Timothy O'Brien got the tape?

A No.

Q Am I not correct, the procedure is the detective who signs it out signs it in?

A Yes.

Q The envelope reflects the detective who signed it in did not sign it out?

That is correct.

Q You have no idea what happened between Johnson and O'Brien, is that true?

A That is correct.

Q The custody envelope should reflect anyone touching the tape, should sign in and sign out?

Scalley - voir dire

233

A Yes.

Q Am I also correct there is an unaccounted-for transfer of that tape from Johnson to this fellow, O'Brien?

A I don't understand what you mean by unaccounted.

Q Detective Scalley, you just testified that the person who signed it out is to sign it in, true?

A Yes.

Q Your custody envelope reflects one man signing it out and one signing it in. There is something wrong?

A No.

Q Am I not correct that the envelope does not follow the usual procedure that is used, that you just testified to, the man taking it in takes it out?

A That doesn't always hold true.

Q When doesn't it?

A It depends on the different circumstances.

Q Is there anything to indicate on the envelope why the detective who signed it out did not sign it in?

A There is not.

Q Is there anything to indicate on the envelope

MR. BREWSTER: I don't see how this has to do with the foundation of it.

THE COURT: Yes.

MR. PATTON: Your Honor, I believe it has to do

Scalley - voir dire

234

with the admissibility of the tape. I will end the voir dire on this. I will continue the voir dire on the tape.

THE COURT: All right. You may mark it.

MR. PATTON: I have no objection to the envelope.

MR. BREWSTER: I offer the envelope marked for identification as 2-6 in evidence.

MR. PATTON: No objection.

MR. KRINSKY: I object on the ground it has nothing to do with Mr. Laing.

THE COURT: It has nothing to do with Mr. Laing at this point.

THE CLERK: Government's exhibit 2-6 previously marked for identification now marked in evidence.

(continued next page)

235

Scalley-direct

DIRECT EXAMINATION

BY MR. BREWSTER:

Q Detective Scalley, from your examination of Exhibit 2-6 in evidence, can you tell us when the tape in question was first placed in that envelope?

A July 30, 1974.

Q Can you tell us by whom it was placed in that envelope?

A Yes, by Mr. O'Brien.

Q And Mr. O'Brien was an employee under your supervision?

A Yes.

Q In this very department, is that correct?

A Yes.

Q Now, would you please tell us when, according to the evidence envelope, the tape in question was next removed from the archives of the Department?

A January 22, 1976.

Q Who signed out for it?

A Detective Johnson.

Q When was it returned to the Department?

A On the same date.

Q By whom?

A Mr. O'Brien.

Scalley-direct

Q The same Mr. O'Brien we have been discussing?

A Yes.

Q Would you please tell us from the examination of the envelope, 2-6, if the tape in question was subsequently removed from the archives of the Department?

A Yes.

Q When?

A On December 16, 1976.

Q Who signed it out at that time?

A Detective Johnson.

MR. BREWSTER: I have no further questions.

THE COURT: All right. Questions?

MR. PATTON: Does counsel offer the tape?

I have an objection to offering the tape, Judge. It's left up in the air.

THE COURT: Easier to show custody at this point.

MR. PATTON: I would like to cross-examine.

CROSS-EXAMINATION

BY MR. PATTON:

Q Detective Scalley, from 12/16 to today's date, do you know where that tape has been?

A (No response.)

Q Not surmise, do you know where that tape has

Scalley- cross - Patton

been?

A No.

Q Do you know how many hands it's gone through, sir?

A No.

Q Your evidence envelope only reflects an entry up to 12/16/76, is that correct?

A Yes.

Q Between that date and this date, you have no idea what has happened to that tape, isn't that true?

A That is correct.

Q Sir, you didn't sign that tape out, did you?

A No.

Q Do you know, as you sit there, whether or not that tape was a clear unused copy of the original tape?

A No.

Q It is possible there could have been something else on that tape, isn't that true?

A Yes.

Q As you sit there now, it is also possible that that tape could have been tampered with, isn't that true?

A Yes.

MR. PATTON: No further questions. I will still object to the admission of the tape into

Scalley

evidence.

MR. BREWSTER: Judge, I won't press the offer at this time, we will introduce it through the next witness.

THE COURT: Reserve decision.

You may step down.

MR. BREWSTER: I will ask Detective Johnson to take the stand for another one or two questions.

(Pause.)

DAVID JOHNSON, recalled as a witness, having been previously duly sworn, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BREWSTER: Of the tape that had been supplied to you

Q Detective Johnson, you understand you are still under oath?

A Yes.

Q I show you what has been marked as Government's Exhibit 2-6 in evidence, that is a custody envelope, is it not, for the tape recording that has been marked Government's Exhibit 2-3?

A Yes.

Q Have you, at my request, examined that during the lunch hour in my office?

Johnson-direct

A Yes.

Q I direct your attention specifically to the entry dated January 22, 1976.

Does that entry reflect that on that date you took the original tape in question from the archives?

A Yes.

Q Now, do you recall as you sit here today the circumstances of your taking the tape out on that particular day?

A Yes.

Q Would you please explain to the Court and jury what the situation was?

A I had gotten -- I had been contacted by your office. The copy of the tape that had been supplied to you for some reason or another you could not decipher everything on there and you wanted to listen to the original or one of your agents did. And I got it out of the file.

Q Again, directing your attention to the latter part of that entry dealing with the return of the tape, do you have any recollection as to how the tape ended up being returned by Mr. O'Brien?

A It was returned to Mr. O'Brien.

Q By whom?

A By myself, I believe.

Johnson-direct

240

Q I see.

And Mr. O'Brien, who worked in the archives, signed it back in rather than yourself?

A Yes sir.

MR. BREWSTER: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. PATTON:

Q Detective, is that Timothy O'Brien?

A Yes, sir.

Q Detective, when a copy is made, is it done reel to reel, from one machine to another machine, on the Nagra?

A For the most part.

Q When you say for the most part, what do you mean?

A We have a fast copier -- it is a reel to reel but we have two or three machines.

Q Am I not correct, the Nagra has its own machine, it is a composite system of the recording device and then an amplifier is set up and a re-recording is set up and it's all keyed into the same device manufactured by the people who make Nagra?

A I don't know who the manufacturer of the machine that they use to copy is.

Johnson- cross

241

Q Now, when you got the tape out on 1/22/76, who did you give it to?

A I believe it was Mr. Anthony.

Q Where did you give it to him?

A At the Department of Investigation office.

Q I see.

And what did Mr. Anthony do with it when you gave it to him?

A He listened to it.

Q Were you present then?

A I think we supplied a room and machine to listen to it. I didn't watch it.

Q Did the Department of Investigation make the recording or did Mr. Anthony from the Federal Government?

A The Department of Investigation made the recording.

Q Am I correct, Anthony was by himself with the original and you were not in the room?

A (No response.)

Q Correct?

A I don't recall.

Q Did you not testify you gave him a room and device and you weren't there?

A I don't know if I remained in there present at

Johnson-cross

242

1 all times while he was listening.

2 Q Am I correct, your duty and obligation was to
3 supervise the custody of that tape so that no one could tamper
4 with it?

5 A You are not correct.

6 Q I am not correct?

7 A No, sir.

8 Q They signed it out to you?

9 A Yes.

10 Q They entrusted you with overseeing the
11 security and integrity of that tape?

12 A Yes, sir.

13 Q What does that mean, Officer, does it not mean
14 you are to see that no one tampered with that tape?

15 A Yes.

16 Q Am I not correct you did not stay with that
17 tape to see that it was not tampered with?

18 A Yes, sir.

19 Q What?

20 A Yes, sir.

21 Q You don't know what if anything happened when
22 Anthony had that tape, isn't that true?

23 A Yes, sir.

24 Q You testified previously you never heard the

Johnson-cross

243

1 original, isn't that correct?

2 A That is correct.

3 Q You don't know that that tape is exactly the
4 same as when you seen it on July 30, 1974?

5 A That is correct.

6 MR. PATTON: I still press my objection to the
7 admission.

8 MR. BREWSTER: I press my offer.

9 MR. PATTON: May I argue this outside the
10 presence of the jury?

11 THE COURT: We will take it here.

12 MR. PATTON: It may be an extended argument.

13 THE COURT: We'll take it at sidebar.

14 (The following occurred at sidebar.)

15 MR. BREWSTER: I would ask for an instruction
16 to the jury at the time of introduction of this item
17 that any questions as to the custody go to the weight
18 on admissibility.

19 THE COURT: Yes.

20 MR. PATTON: I respectfully differ with the
21 United States Attorney and your Honor's inclination.
22 What we are concerned with here is the authenticity
23 of the document or the item -- the same rules of
24 evidence that apply to a writing, it also applies to

Johnson

244

the tape recording. They have failed to establish the chain of custody to this particular item. Not only that, through this witness it was established that he put it over to somebody else. There are gaps in the chain of custody. I submit they have not laid a proper foundation. This does not go to the question of weight but goes to the question of authenticity on admissibility.

MR. BREWSTER: Judge, the only gap that I am aware of has been shown to be that a room was supplied so that the postal inspector could listen to it. I was there too, to the best of my recollection. But the testimony is entirely apart from my recollection that a room was made available. I disagree that there is a gap in the custody. The only period we are talking about is December 16th until today when the tape was turned over to the United States Attorney and it has been in my office --

THE COURT: I will allow it.

MR. PATTON: I will take an exception, your Honor.

(Continued next page.)

Laing-cross-Brewster

1086

MR. BREWSTER: It's going to take the next week --

MR. KRINSKY: Object to any speeches by Mr. Brewster.

THE COURT: Just answer his questions, try not to volunteer any additional information other than what's being asked.

Q There is nothing about what Postal Inspector Petrosky showed you or said to you that gave you any feeling that something was wrong with Mr. Moore's accounts?

A Well, not at that time.

Q Mr. Laing, as you look back on the situation in hindsight, to this period during which the end of January Mr. Moore got you into a partnership on the Health Food Store and in late March got you into another close relationship with him on the church, is there any doubt in your mind, at least from the advantage of hindsight that there was a check fencing operation of great magnitude going on?

A I had no idea.

Q I'm not saying whether you had an idea at the time, I'm just asking you now with the advantage of hindsight there's any doubt in your mind that that's what was happening?

A I knew after the Inspector told me.

Laing-cross-Brewster

1087

Q As you sit here today, Laing, is there any doubt in your mind that at the very time that Mr. Moore was bringing you in to partnership with him on a Health Food Store, the church, that he was operating a check fencing scheme of great magnitude?

A No response.

THE COURT: What was that?

THE WITNESS: I said no.

MR. BREWER: "No."

Q He invited you into partnership with him on two different enterprises, right in the middle of this thing, didn't he?

A He's been inviting me to do something for over a year.

Q He in fact succeeded in getting you into it right in the middle of his check fencing operation.

MR. PATTON: Objection, your Honor.

THE COURT: Yes, I'll sustain it.

Q Mr. Laing, assuming that what was going on during this period of time was a massive check fencing operation, you could have blown the whistle on this whole thing, couldn't you?

MR. KRINSKY: I don't understand the question, I object.

Laing-cross-Brewster

1088

A What is the question?

Q Well, Mr. Laing --

THE COURT: Rephrase it.

Q You were his partner in the Health Food Store, right?

A No response.

Q Your wife was his treasurer. Your name was on the lease. You had a joint account with him, and on the church you were one of the incorporators. You had a joint account with him. You went over there to lecture. He got you right in there with him, didn't he?

A No response.

Q He got you involved in those two enterprises, didn't he?

A He didn't get me involved in anything.

Q You became his partner in the Health Food Store, right?

A That's correct.

Q You became a holder of a joint account with him on the Health Food Store, right?

A That's right.

Q You were an incorporator of the church. You lectured at the church and you became the holder of a joint account with him at the church, is that right?

A No response.

Q Isn't that right, Mr. Laing?

A I was a signatory on the church account.

Q You held a joint account with him, did you not, sir?

A Yes, but I didn't have any power over it.

Q Did you hear Mr. Remson's testimony?

A Yes.

Q Did you hear Mr. Remson testify the withdrawals can only be made on that account with two signatures?

A That's not correct.

Q You could have withdrawn from that account all by yourself?

A No, there's only one entrance made on the account and only Mr. Moore could operate the account.

Q Mr. Laing, you told the Grand Jury that you could withdraw on that account all by yourself, didn't you, sir?

MR. KRINSKY: Objection unless he's going to find a place from the Grand Jury minutes if he asked those questions, made those answers and let him ask the witness.

THE COURT: If he made those statements to those questions.

Q Mr. Laing, do you remember being asked this question and giving this answer on March 2, 1976?

MR. KRINSKY: Page?

MR. BREWSTER: 28.

Q "Question: I show, again, Grand Jury Exhibit 1 from February 24, 1976 and I ask you if you recognize your signature on the signature card on account 3050?

"Answer: Yes, that is correct.

"Question, you, as a result of that signature card were free to make deposits and withdrawals for that account, were you not?

"Answer: Yes, I would be free to do that."

Do you remember being asked those questions and giving those answers, Mr. Laing?

A Could I see the account card?

Q Page 28, Mr. Laing (Handing to the witness a transcript).

A Yes.

THE COURT: We're going to recess for a short while. Then we'll come out again. We're going to stay for a while this evening. I suggest you get yourselves some coffee. Do it now. We'll bring you back in a while.

Laing-cross-Brewster

1091

JUROR NO. THREE: About how long?

THE COURT: We'll be back about ten to five.

JUROR NO. THREE: Be back?

THE COURT: Yes, we're going to finish today.

You go to work at 12:00 o'clock?

JUROR NO. THREE: Yes.

(Recess.)

(Continued on next page.)

Laing-cross/Brewster

1092

(Whereupon, the jury entered the courtroom.)

THE COURT: All right.

Q Mr. Laing, did you or did you not tell the grand jury that you were free to make withdrawals from the account 3050?

A Yes.

Q Was that true or false?

A It was true.

Q Will you speak up, please?

A It was true.

Q You told this jury a few moments ago, did you not, sir, that you were not free to make withdrawals?

A I didn't know which account you are referring to.

Q I see. You mean you were not free to make withdrawals from account 3008?

A No.

Q You were not free to make withdrawals from account 3008?

A No.

Q Now, Mr. Laing, let me go back to the question I was asking you a little while ago. Is it fair to say with the advantage of hindsight that Mr. Moore drew you in --

MR. PATTON: I object to the question already,

Lainig-cross/Brewster

1093

1 Judge.

2 THE COURT: Yes.

3 Q Is it fair to say that Mr. Moore took you into
4 a relationship with him on two only legitimate enterprises
5 at the very same time that he was operating a wholly
6 illegitimate enterprise?

7 MR. PATTON: I object to the form of the
8 question.

9 THE COURT: Yes. I think it's a double
10 question, number one, and number two, draws
11 conclusions. You're asking him to answer them.

12 MR. BREWSTER: I will rephrase it, Judge.

13 THE COURT: Yes. It's a bad question.

14 Q Is it fair to say with the advantage of
15 hindsight that Mr. Moore took you in?

16 A What was hindsight?

17 Q From where you sit today being able to look
18 back on this whole situation as it happened, is it fair to
19 say that Mr. Moore took you into a relationship with him on
20 two wholly legitimate enterprises at the very same time that
21 forged and stolen checks were going through these accounts?
22 Is that fair to say, Mr. Laing?

23 A I joined with him?

24 Q On legitimate business ventures, legitimate

Laing-cross/Brewster

1094

1 community ventures such as the church, at the very same
2 time that forged and stolen checks were pouring through his
3 bank accounts?

4 A Coincidental.

5 Q It's a coincidence, you say?

6 A Yes.

7 Q But that is with the advantage of being, shall
8 we say, a Monday morning quarterback, that is what happened;
9 is that correct?

10 A What would appear so.

11 Q He took you, a completely innocent man, and
12 drew you into the inner circle of certain ventures that he
13 was involved in?

14 MR. PATTON: I object to the form of the
15 question.

16 THE COURT: Yes. The form is bad.

17 Q He took a wholly innocent man and drew you
18 into his church and his health food stores as a partner;
19 is that correct?

20 MR. PATTON: Same question. He hasn't --

21 MR. BREWSTER: What's the objection?

22 THE COURT: It didn't change.

23 MR. PATTON: The first half of the question.

24 THE COURT: Yes. I think it is an objectionable

LAing-cross/Brewster

1095

question.

Q Well, were you an innocent man at the time this was going on, Mr. Laing?

A Yes, I am.

Q Wasn't it a little like Willie Sutton asking J. Edgar Hoover for a lift to the nearest bank?

THE COURT: That is a bad question. Maybe not everybody here knows who all of these people are that you are talking about. I am almost certain that some of them in the room don't know.

Q Mr. Laing, you could have blown the whistle on this whole thing, couldn't you?

MR. KRINSKY: Objection. It assumes that he knew it was going on.

THE COURT: Yes.

MR. BREWSTER: Judge, I am not saying that.

THE COURT: I know.

MR. PATTON: No speeches if he is going to object. We have a ruling. We go to the side bar.

THE COURT: You are presuming the very fact that the jury must find beyond a reasonable doubt that he had knowledge that there was something irregular and improper and illegal taking place. So that is what is wrong with the question. It is

Laing-cross/Brewster

1096

for the jury.

Q Mr. Laing, you are telling the jury that you didn't know what is going on, right?

A That's correct.

Q What I am asking you is this: in the position that you held as his partner in the health food store, as an incorporator and member of his church, you could have found out.

MR. PATTON: Objection.

MR. KRINSKY: Objection.

Q Couldn't you?

MR. PATTON: Same objection.

THE COURT: Yes. Sustained. That's likewise an objectionable question.

MR. BREWSTER: Could we go to the side bar?

MR. PATTON: I think we should.

THE COURT: Sure. Those questions are strictly technical under the circumstances.

(The following took place at side bar.)

MR. BREWSTER: I am asking the man if he was in a position to find out. Not if he did anything about it. But if he was in a position to find out.

MR. KRINSKY: It is for the jury to decide.

MR. BREWSTER: It is for the jury to decide

Laing-cross/Brewster

1097

whether he did find out. Not whether he was in a position to find out. I asked him that.

THE COURT: One of the fundamental principles of law is that the person need not do anything. Even if he knows something is going on, he can walk right by. He has no duty or obligation of calling up anybody and saying, I know he is committing a crime. Now, that's what you are asking.

MR. BREWSTER: No.

MR. PATTON: Your Honor, I am --

THE COURT: I know what you are getting at. I don't say you won't get it eventually. But under these circumstances you can't do it. There is no duty imposed on a citizen to do that, whether it's the manager of a bank or anything else. It's like asking a question to the witness on the witness stand, why didn't you go to the police and tell them.

MR. BREWSTER: Judge, I --

THE COURT: That's totally objectionable.

MR. BREWSTER: What I am trying to bring out, if Mr. Moore was involved in a criminal venture at this time, was it reasonable for him to bring in a wholly innocent man?

THE COURT: What you want to say is, having

Laing-cross/Brewster

1098

been apprised of it, did you do anything about it. You can ask him that question. His answer will be yes or no. He doesn't have to do anything about it. You can ask that question. That's as far as you can go.

MR. PATTON: I would like to ask, because of the line of questioning made by the U.S. Attorney here, it assumes the fact that the jury has to find -- he's assuming throughout this as if Moore had --

THE COURT: Yes, knowledge is an essential part.

MR. PATTON: Your Honor, Moore is still an innocent man. And all the questions being phrased, especially the lesson about Willie Sutton and J. Edgar Hoover --

THE COURT: They don't know who they are. You do because you were a district attorney.

MR. PATTON: I don't care. I think that is extremely objectionable, and I am asking the Court to declare a mistrial because the whole line of questioning in the last ten minutes has been assuming the fact -- I mean this jury has to find these things itself. My client is still an innocent man. And to make that kind of a comment in front of this jury,

Laing-cross/Brewster

1099

I think is grounds for a mistrial and I ask for it.

THE COURT: I think you are entitled at this point for the Court to charge the jury that both men are presumed innocent and that no question asked takes away that presumption of innocence. No question.

MR. BREWSTER: The purpose of the questioning is to probe the credibility of the defendant.

THE COURT: But you can't assume that the guilt of an individual --

MR. BREWSTER: All right.

MR. PATTON: And I ask the Court rule on my application.

MR. BREWSTER: I am sorry.

THE COURT: I will deny it.

MR. PATTON: All right.

(End of side bar.)

THE COURT: What has come out of that side bar, so to speak, is that the Court feels at this time that it must give you a short preliminary charge once again as I did when I selected you as jurors. If you recall when I selected you as jurors, I told you that one of the things or one of the essential principles must be that you would accept that as the defendants sit at that defense counsel

Laing-cross/Brewster

1100

table, and even during the entire time that the Court charges you, and even right up to the point of deliberations, and until such time as you arrive at a verdict and announce it to the Court, the defendants are presumed innocent under the law. And that presumption must run completely through the entire trial and it must stay with the defendants.

So my ruling is at this time that I want you to continue that presumption at all times, and any questions that may -- and I say they are not being done deliberately. I can assure you of that. But if they in some way indicate to you that the presumption of innocence has now become a matter of guilt, you must disregard any question that might give you that attitude or that inference.

Okay.

(continued next page)